

In the United States Court of Federal Claims

No. 19-1626MC
(Filed: December 10, 2019)

AMEER FLIPPIN, *
*
 Petitioner, *
*
v. *
*
THE UNITED STATES, *
*
 Defendant. *

RCFC 27(a); Petition to Perpetuate
Testimony; Subject-Matter Jurisdiction;
Pro Se

Ameer Flippin, Washington, DC, pro se.

Zachary J. Sullivan, United States Department of Justice, Washington, DC, for defendant.

OPINION AND ORDER

SWEENEY, Chief Judge

Petitioner Ameer Flippin, proceeding pro se, filed a petition on October 17, 2019, pursuant to Rule 27 of the Rules of the United States Court of Federal Claims (“RCFC”), along with an application to proceed in forma pauperis. Petitioner seeks to conduct a deposition to perpetuate the testimony of a member of the United States Attorney’s Office for the District of Columbia to expose certain sealed executive orders that pertain to the 2016 presidential election in which petitioner himself participated as a write-in candidate. Petitioner’s motion to proceed in forma pauperis is granted; however, because the court does not have subject-matter jurisdiction over petitioner’s prospective claim, his petition under RCFC 27(a) does not describe a matter cognizable in this court and is therefore denied.

I. BACKGROUND

Petitioner represents that he is “a prospective plaintiff in an action intended to be commenced in the United States Federal Claims Court.” Pet. ¶ 1. He asserts that he is unable to prosecute this action because the federal government “has Orders of Protection under seal preventing the release of information related to the 2016 Presidential Elections” in which petitioner was a write-in candidate and “where concerns [arose] related to National Security” Id. ¶ 2. Petitioner asserts several bases as the “subject matter” of his prospective complaint, including: (1) “the unauthorized practice of law by several individuals,” (2) civil rights violations under 42 U.S.C. § 1983, (3) violations of the Federal Tort Claims Act (“FTCA”), (4) money laundering, (5) Racketeer Influenced and Corrupt Organizations (“RICO”) Act violations, and (6) violations of the Sherman Antitrust Act. Id. ¶ 3.

Although the petition is not a model of clarity, it appears that petitioner argues that the illegal and tortious actions he describes are connected to the status of unspecified campaign funds involved with the 2016 presidential election. *Id.* Therefore, the actual subject matter of the prospective suit appears to be a claim related to those campaign funds. *See id. passim.* Petitioner asserts “liability concerns where political campaign funds are believed to have been taken” by the federal government via executive order, *id.* ¶ 3, and through this action he expects to elicit information “related to possible Executive Branch Orders targeting [petitioner] to prevent disclosure of information needed for causes of action in forthcoming litigation related to missing campaign funds from 2015 to present and internet business related transactions,” *id.* ¶ 6 (emphasis omitted).

II. PROCEDURAL HISTORY

Petitioner filed the instant action on October 17, 2019. Defendant responded on December 9, 2019. Deeming additional briefing unnecessary, the court is prepared to rule on the petition.

III. LEGAL STANDARDS

A. RCFC 27

RCFC 27 permits prospective plaintiffs to petition the court to order depositions to perpetuate testimony in certain circumstances. The testimony the petitioner seeks to perpetuate must relate to a “matter cognizable in the court,” and the petition must show

- (A) that the petitioner expects to be a party to an action cognizable in the court but cannot presently bring it or cause it to be brought;
- (B) the subject matter of the expected action and the petitioner’s interest;
- (C) the facts the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;
- . . . and
- (E) the name, address, and expected substance of the testimony of each deponent.

RCFC 27(a)(1); accord *Trice v. United States*, 19 F. App’x 853, 854 (Fed. Cir. 2001) (unpublished order) (agreeing that a petitioner must provide enough information for the court to determine that it possesses subject-matter jurisdiction over the prospective claim). “If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that” describes who is to be deposed, the subject matter of the deposition, and the form of the deposition. RCFC 27(a)(3).

B. Subject-Matter Jurisdiction

Whether the court has jurisdiction to decide the merits of a case is a threshold matter. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998). “Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.” Ex parte McCardle, 74 U.S. (7 Wall) 506, 514 (1868). Either party, or the court sua sponte, may challenge the existence of subject-matter jurisdiction at any time. Arbaugh v. Y & H Corp., 546 U.S. 500, 506 (2006).

The ability of the United States Court of Federal Claims (“Court of Federal Claims”) to entertain suits against the United States is limited. “The United States, as sovereign, is immune from suit save as it consents to be sued.” United States v. Sherwood, 312 U.S. 584, 586 (1941). The waiver of immunity “cannot be implied but must be unequivocally expressed.” United States v. King, 395 U.S. 1, 4 (1969). The Tucker Act, the principal statute governing the jurisdiction of this court, waives sovereign immunity for claims against the United States, not sounding in tort, that are founded upon the United States Constitution, a federal statute or regulation, or an express or implied contract with the United States. 28 U.S.C. § 1491(a)(1) (2018). However, the Tucker Act is merely a jurisdictional statute and “does not create any substantive right enforceable against the United States for money damages.” United States v. Testan, 424 U.S. 392, 398 (1976). Instead, the substantive right must appear in another source of law, such as a “money-mandating constitutional provision, statute or regulation that has been violated, or an express or implied contract with the United States.” Loveladies Harbor, Inc. v. United States, 27 F.3d 1545, 1554 (Fed. Cir. 1994) (en banc).

“In determining jurisdiction, a court must accept as true all undisputed facts asserted in the plaintiff’s complaint and draw all reasonable inferences in favor of the plaintiff.” Trusted Integration, Inc. v. United States, 659 F.3d 1159, 1163 (Fed. Cir. 2011). However, plaintiffs proceeding pro se are not excused from meeting basic jurisdictional requirements, see Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995), even though the court holds their complaints to “less stringent standards than formal pleadings drafted by lawyers,” Haines v. Kerner, 404 U.S. 519, 520 (1972). In other words, a plaintiff (even one proceeding pro se) must establish, by a preponderance of the evidence, that the court possesses subject-matter jurisdiction. See McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936); Trusted Integration, 659 F.3d at 1163.

IV. ANALYSIS

Petitioner alleges that the testimony he seeks to perpetuate will (1) establish that a member of the United States Attorney’s Office for the District of Columbia was “possibly . . . working with foreign intelligence agencies and was possibly dispatched as an undercover attorney in the United States to prevent [petitioner] from succeeding on related matters associated with the forthcoming litigation on missing 2016 Presidential Campaign Funds, redirected e-commerce transactions, seized ACH transfers, and RICO-related activities,” Pet. ¶ 4(a); (2) establish a connection between missing campaign funds and the federal government, unspecified foreign governments, and petitioner’s own “persistent run-ins with law enforcement,” and that without such information, “it is impossible for most Americans to

